

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1904.

No. 1492.

GEORGE C. HAZELTON, APPELLANT,

vs.

FRANCIS MILLER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

GEORGE C. HAZELTON, Appellant, }
vs. } No. 1492.
FRANCIS MILLER. }

a Supreme Court of the District of Columbia.

GEORGE C. HAZELTON, Complainant, }
vs. } No. 24238. In Equity.
FRANCIS MILLER, Defendant. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill for Specific Execution, etc.*

Filed Oct. 16, 1903.

In the Supreme Court of the District of Columbia.

GEORGE C. HAZELTON, Plaintiff, }
vs. } Equity. No. 24238.
FRANCIS MILLER, Defendant. }

To the honorable the justice of said court holding the equity court:

The plaintiff, George C. Hazelton is an attorney at law, and brings his bill in equity against Francis Miller, and thereupon shows as follows:

1. That both he and the said defendant are citizens of the United States and reside in the District of Columbia.

2. That this suit is brought by the plaintiff in his own right against the defendant in his own right for the purpose of securing the specific execution of a contract for the conveyance of real estate situated in the District of Columbia entered into between them and hereinafter more fully set forth.

2 3. That on the 11th day of December, A. D., 1902, the defendant, Francis Miller, executed and delivered to the plaintiff his certain contract in writing whereby, for the sum of one dollar and other valuable consideration the said Francis Miller thereby agreed and bound himself and his heirs to sell to George C. Hazelton, who is the same person who is plaintiff in this case, and to deliver by good and sufficient deed, at any time during the then present session of Congress and such additional time as might be necessary for settlement under appropriation by that Congress, part of lot numbered two (2) in square one hundred and forty-three (143) being six thousand seven hundred and twenty (6720) feet, more or less, and all the ground owned by the said Francis Miller in said square with the improvements thereon for the sum of nine thousand dollars (\$9,000.00). It was also provided in said contract that should the said plaintiff fail to take advantage of, and accept said offer as above, within the time mentioned, then that said agreement should be null and void. The said agreement is hereby referred to and made a part of this bill and a copy thereof is filed herewith as an exhibit marked "A," and the original will be produced at any time when required by the court or the said defendant.

4. A part of the consideration mentioned in said contract moving to the plaintiff from the defendant was services rendered both before and after the making of said contract, by the plaintiff in bringing the said property to the attention of the committees of Congress as a suitable and appropriate site for a hall of records. Plaintiff, at the instance of the said defendant, who desired to sell said
3 property at a reasonable price, had expended much time and labor and expended considerable money, prior to the making of that contract and has also subsequent thereto, in calling the attention of the committees of Congress to the eligibility and desirability of the land in said square for the purpose aforesaid, and during the two last sessions of Congress plaintiff devoted a great deal of his time to the ascertainment of the condition of the title, the condition of the land as affording a good foundation, the condition, size and durability of the sewers in the streets surrounding said square, the kind, character and condition of the buildings thereon, and other facts tending to show that the said square was a desirable location for said building, and furnishing them to and laying them before the said committees of Congress in order to enable them to act intelligently upon the matter. At the first session of the 57th Congress plaintiff called the attention of the committees of Congress to said location and, at the request of the members of said committees, he ascertained and collated various facts in relation thereto, and subsequently during said session at the like request of said committees, prepared a bill to be introduced in Congress authorizing the purchase of said square for said purpose, but the bill did not pass at that session. Subsequently at the second session of said Congress he again called the attention of the commit-

tées to the said real estate and at their like request collected and furnished them other important information in relation to it, and
 4 employed others to aid and assist him in securing such information to demonstrate to said committees the propriety of said purchase. He also, at his own expense, caused many of said facts to be put in print and furnished them to the members of said committees for their information and for the use of other members of Congress when said bill should come up for debate. At several sessions of Congress he appeared before said committees and filed briefs and made arguments, the object and tendency of which were to show that upon all of the facts presented in relation to this and other sites mentioned and discussed, the square above mentioned was better adapted to the purpose of a hall of records than any other in the city. Said committees all the time understood that he was the owner of some of said property and was acting as attorney for other owners of the said real estate. At the second session of said Congress said bill was passed authorizing the purchase or condemnation of said square for the purpose aforesaid and appropriating the sum of four hundred thousand dollars (\$400,000.00), or so much thereof as might be necessary to pay for the same. Said act provided that if the Secretary of the Treasury could by negotiation acquire said square or any part thereof at such figures as might be deemed reasonable, that he might purchase instead of condemning. After the passage of said bill, with the knowledge and acquiescence of the said Miller, the plaintiff commenced negotiations with the proper officers of the Treasury Department to make a sale of said property to the United States and on the — day of Aug. 1903, agreed with said officers
 5 upon a price which they were willing to pay for said property rather than to condemn it, which aggregated about fourteen thousand three hundred and ninety-five dollars and fifty cents (\$14,395.50), and informed the defendant that such contract had been consummated, but that it would take some time for the Treasury Department to investigate the title and make arrangements for the payment of the money, and the proper Treasury officers are now engaged in such work and the time has not yet arrived when they can properly, under said act of Congress, pay out the money for the real estate hereinbefore mentioned, and the necessary time for settlement under said appropriation has not yet expired.

5. The plaintiff further shows that after he had informed the defendant had knowledge of the sale which he had made to the United States of said property, the defendant intimated to the plaintiff that he did not intend to keep his contract with him, but to convey the property direct to the United States and demand the right to receive from the United States the full sum of money which the Government has agreed to pay for said lot of land, and denies the right of the plaintiff to the purchase money for which said property has sold in excess of the nine thousand dollars (\$9,000.00). And he is informed and believes that the defendant has made and tendered a deed for said property to the United States, but that the latter has

not accepted the same or paid any purchase money on account thereof.

6 6. The plaintiff further shows that on the 5th day of October, 1903, he caused a deed in proper form from defendant and wife to this plaintiff to be prepared and took it to defendant, and thereupon tendered to him the sum of nine thousand dollars (\$9,000.00) in United States legal tender money and demanded of him that he execute and deliver said deed to plaintiff, but the defendant refused to execute the same. Said deed as prepared and presented to the defendant is filed herewith and marked Exhibit "B," and prayed to be read as part of this bill. And the plaintiff hereby tenders himself ready and willing at any time to pay to the said defendant or into the registry of the court the said sum of nine thousand dollars (\$9,000.00) whenever the defendant shall execute and deliver to him or deposit in the registry of the court a deed in proper form conveying complete record title to the plaintiff for said land.

The plaintiff therefore prays as follows :

1st. That the said Francis Miller may be made defendant hereto and that the process of subpoena may issue against him requiring him to answer this bill under oath.

2nd. That the court will by its proper decree to be passed herein, require the said defendant to convey to the plaintiff a good record fee simple title to the said property which is vested in the said defendant.

3rd. That the defendant may be temporarily enjoined during the pendency of this suit from conveying said real estate to the United

7 States or any one else and from receiving from the United States any money or any draft or warrant which may be issued by the Treasury Department in payment for said land and that at the final hearing said injunction may be made perpetual.

4th. The plaintiff prays for such other and general relief in the premises as he may be entitled to.

C. C. COLE,
Attorney for Plaintiff.

The defendant to this bill is Francis Miller.

DISTRICT OF COLUMBIA, *To wit :*

George C. Hazelton being duly sworn says upon oath that he is the plaintiff mentioned in the foregoing bill; that he has read the same and knows its contents and that the matters therein stated upon his knowledge are true, and those stated upon information and belief, he believes to be true.

GEO. C. HAZELTON.

Subscribed and sworn to before me this 16th day of October, A. D. 1903.

[NOTARIAL SEAL.]

WALTER F. DONALDSON,
Notary Public, D. C.

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EXHIBIT A.

Agreement to Sell.

For the sum of one dollar and other valuable considerations, I hereby agree and bind myself and my heirs to sell to George C. Hazelton, and to deliver by good and sufficient deed at any time during the present session of Congress, and such additional time as may be necessary for settlement under appropriation by that Congress, part of lot numbered two (2), in square numbered one hundred and forty-three (143) being six thousand, seven hundred and twenty (6,720) feet, more or less, and all the ground owned by me in said square with the improvements thereon, for the sum of nine thousand dollars (\$9,000).

Should the said George C. Hazelton fail to take advantage of and accept this offer as above within the time mentioned, then this agreement shall be null and void.

Witness my hand this 11th day of December, A. D. 1902.

(Signed)

FRANCIS MILLER.

Witness:

WILL H. ALBURGER.

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EXHIBIT B.

This deed, made this 5th day of October in the year one thousand nine hundred and three by and between Francis Miller and — Miller, his wife, both of Washington, District of Columbia parties of the first part, and George C. Hazelton of Washington, District of Columbia, party of the second part:

Witnesseth, that in consideration of nine thousand dollars, the parties of the first part do grant unto the party of the second part, in fee simple, all that piece or parcel of land in the city of Washington, District of Columbia, described as follows, to wit: the west part of original lot numbered two (2) in square numbered one hundred and forty-three (143), contained within the following metes and bounds, viz:—Beginning for the same eighty-nine (89) feet, one (1) inch west of the southeast corner of said square, and running thence west on E street, fifty-one (51) feet, to the southwest corner of said lot two (2); thence north one hundred and sixty-eight (168) feet to the north line of said lot; thence east thirty-one (31) feet; thence south ninety-two (92) feet; thence east twenty (20) feet; and thence south seventy-six (76) feet, to the place of beginning, containing 6728 feet more or less together with the improvements, rights, privileges and appurtenances to the same belonging.

10

And the said parties of the first part covenant that they will warrant the title to the property hereby conveyed; and

that they will execute such further assurances of said land as may be requisite.

Witness our hands and seals the day and year hereinbefore written.

In presence of—

_____.
_____.

_____. [SEAL.]
_____. [SEAL.]

DISTRICT OF COLUMBIA, *To wit* :

I, _____, a notary public in and for the District of Columbia, do hereby certify that Francis Miller and _____ Miller his wife parties to a certain deed bearing date on the — day of October 1903, and hereto annexed, personally appeared before me in said District, the said Francis Miller and _____ Miller, his wife being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this — day of October, 1903.

_____. [SEAL.]

11

Demurrer.

Filed Dec. 1, 1903.

In the Supreme Court of the District of Columbia.

GEORGE C. HAZELTON	}	No. 24238. Equity.
<i>vs.</i>		
FRANCIS MILLER.		

The defendant demurs to the complainant's bill, and, for cause of demurrer, shows that the complainant has not, in and by his said bill, stated such a case as entitles him to any relief in equity against this defendant.

J. J. DARLINGTON,
Sol. for Defendant.

I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

J. J. DARLINGTON,
Sol. for Defendant.

DISTRICT OF COLUMBIA, ss :

I, Francis Miller, defendant in the above entitled cause, on oath say that the foregoing demurrer is not interposed for purposes of delay.

FRANCIS MILLER.

Subscribed and sworn to before me this first day of December, A. D., 1903.

[NOTARIAL SEAL.]

LAURA A. SHUGRUE,
Notary Public, Dist. of Col.

12 Service accepted this first day of December, A. D. 1903.
C. C. COLE,
Sol. for Comp't.

Decree Sustaining Demurrer and Dismissing Bill.

Filed Sep. 16, 1904.

In the Supreme Court of the District of Columbia.

GEORGE C. HAZELTON }
vs. } No. 24238. Equity.
FRANCIS MILLER. }

This cause coming on to be heard upon the defendant's demurrer to the complainant's bill, and having been argued by the solicitors for the parties respectively, and duly considered, it is thereupon by the court, this 16th day of September, A. D. 1904, adjudged, ordered and decreed that the said demurrer be, and the same hereby is, sustained, and that the complainant's bill be, and the same hereby is, dismissed, with costs.

From the foregoing decree the complainant prays an appeal to the Court of Appeals of the District of Columbia, which is granted and the bond for costs fixed at one hundred dollars.

THOS. H. ANDERSON, *Justice.*

13 *Memorandum.*

September 27, 1904.—Appeal bond filed.

Designation for Record, etc.

Filed Oct. 1, 1904.

In the Supreme Court of the District of Columbia.

GEORGE C. HAZELTON }
vs. } Equity. No. 24238.
FRANCIS MILLER. }

The clerk of the supreme court of the District of Columbia will please embrace the following papers in the transcript of the record for use upon appeal in the Court of Appeals.

- (1.) The bill and exhibits filed therewith.
- (2.) The demurrer of the defendant.
- (3.) The final decree of the court dismissing the bill.

Please have the record ready within forty days from the 27th day of September, or if you are unable to complete it in that time, please let us know a few days before the expiration of the time that we may have it extended.

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COLE & DONALDSON.

To J. J. Darlington, Esq., attorney for defendant:

We have this 1st day of October, 1904, filed the foregoing designation for the record in the above entitled cause to be used on appeal to the Court of Appeals.

COLE & DONALDSON.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 14, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,238, in equity, wherein George C. Hazelton is complainant, and Francis Miller is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 7th day of November, A. D. 1904.

Seal Supreme Court
of the District of
Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1492. George C. Hazelton, appellant, vs. Francis Miller. Court of Appeals, District of Columbia. Filed Nov. 9, 1904. Henry W. Hodges, clerk.

